

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 307

August 25, 1966

TITLE INSURANCE COMPANY: TRUST DEPARTMENT AND ESCROW SERVICES

Syllabus:

Taxpayer is engaged principally in the business of writing title insurance policies. It in addition conducts a trust business and an escrow service business. The three businesses activities are conducted through two separate departments designated as the "title insurance department" and the "trust Department." In addition to a main office in California, taxpayer has a number of branch offices scattered throughout the State. Some of the branches have both a title insurance department and a trust department while others have only a title insurance department. All branch offices provide escrow services.

Prior to May, 1959, taxpayer's escrow business was considered by taxpayer as part of the trust department. Taxpayer reported the income from the trust business and escrow business conducted by branches having a trust department for franchise tax purposes and paid franchise tax thereon at the bank rate. In May, 1959, taxpayer transferred the escrow business from the trust department to the title insurance department. Thereafter taxpayer included the escrow fees in the tax basis subject to the annual tax imposed under Article XIII, Section 14 4/5 of the State Constitution upon insurance companies.

(1) Whether the income realized by taxpayer from its escrow business is subject to the franchise tax.

(2) Whether the income realized from escrow business by taxpayer's branch offices which did not conduct a trust business is subject to the franchise tax.

(1) Article VIII, Section 14 4/5 of the State Constitution imposes an annual tax upon all income derived by title insurance companies from business done in this State except interest, dividends, rents from real property and profits and income from investments. The section also provides that in the case of title insurance companies doing trust business under the banking laws of this State, the income from such business is excluded from the basis of the annual tax if otherwise taxed by this State. Subsection (f) (2) in effect provides for the taxation of the trust business income of title insurance companies under the Bank and Corporation Tax Law. Subsection (f) also provides that the annual tax imposed upon insurance companies is in lieu of all other state, county and municipal taxes and licenses with certain exceptions not material here.

The provisions of Article XIII, Section 14 4/5 are explicit that all income

of title insurance companies except those specifically excluded under Subsection (c) is subject to the annual tax imposed thereunder upon such companies. Since the income of title insurance companies from their escrow business is not among the excluded income, it is apparent that the section deems such income as part of the base subject to the annual tax. In 1961 Section 12396 was enacted into the Insurance Code to require title insurance companies engaged in the escrow business to conduct such business under a separate escrow department and not as a part of the trust department. It thus seems that the escrow income may not be considered as part of the trust business of title insurance companies.

In view of the facts that the escrow business income of title insurance companies is includible in the base subject of the tax imposed under Article XIII, Section 14 4/5 and the tax thereunder is in lieu of all other state taxes, it is our opinion that such income is not subject to the franchise tax.

(2) Article XIII, Section 14 4/5 does not make any distinction between the business conducted by title insurance companies through branch offices having a trust department and those not having a trust department. Since escrow business conducted through taxpayer's branch offices is nonetheless business of the taxpayer, the decision with respect to Question (1) applies irrespective of whether such business was conducted through branch offices which do not have a trust department.